

# Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

## Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

## Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

## Title 08 DEPARTMENT OF NATURAL RESOURCES

### Subtitle 02 FISHERIES SERVICE

#### 08.02.23 Shellfish Aquaculture and Leasing

Authority: Natural Resources Article, §§4-11A-02 and 4-11A-12, Annotated Code of Maryland

#### Notice of Proposed Action

[16-230-P]

The Secretary of Natural Resources proposes to amend Regulations .03 and .04 under COMAR 08.02.23 Shellfish Aquaculture and Leasing.

#### Statement of Purpose

The purpose of this action is to clarify that a person needs an authorization from the Department prior to engaging in certain shellfish aquaculture activities in Maryland waters and to liberalize the Shellfish Aquaculture Harvester Permit registration requirement. These changes were discussed with and supported by the Aquaculture Coordinating Council.

In Regulation .03, the proposed action clarifies that shellfish aquaculture activities may only be performed on a leased area or in a permitted area. An individual would come to the conclusion that a lease or permit is required by reading definitions, several statutes and regulations together, but adding the statement to regulation makes it completely clear. The proposed action also reorganizes and simplifies some of the structure of the regulation to make it easier to read.

In Regulation .04, the proposed action removes the requirement for individuals working on a lease and under the supervision of a permittee, from having to obtain and possess a registration card. The action also adds language to ensure that the permittee is responsible for those individuals and corrects affected references. Current regulations require every individual that is conducting aquaculture activities to have either a Shellfish Aquaculture Harvester Permit or

Registration Card in order to participate in aquaculture activities on the lease. The industry has requested that allowances be made for workers that are accompanying a permittee and requested that the Department exempt them from the registration requirement. This change will allow leaseholders to hire short-term laborers that will be supervised by the permittee while working on the lease.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The proposed action may benefit lease holders.

| II. Types of Economic Impact.               | Revenue (R+/R-)         |                |
|---|-------------------------|----------------|
|   | Expenditure (E+/E-)     | Magnitude      |
| A. On issuing agency:                       | NONE                    |                |
| B. On other State agencies:                 | NONE                    |                |
| C. On local governments:                    | NONE                    |                |
|   | Benefit (+)<br>Cost (-) | Magnitude      |
| D. On regulated industries or trade groups: |                         |                |
| Registration cards                          | (+)                     | Indeterminable |
| E. On other industries or trade groups:     | NONE                    |                |
| F. Direct and indirect effects on public:   | NONE                    |                |

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

D. Removing the registration card requirement for individuals

supervised by a permittee provides business flexibility which could save leaseholders time and money. Although registration cards are free, there is a period of time that is necessary to apply for and receive one. Relaxing the requirements for registration cards provides the leaseholder the flexibility to hire day workers if they choose, possibly avoiding delays and saving them money by not having to wait for workers to obtain a card. The actual amount is indeterminable because it will depend on each individual business' operational structure.

#### Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Removing the registration card requirement for individuals supervised by a permittee provides business flexibility which could save leaseholders time and money. Although registration cards are free, there is a period of time that is necessary to apply for and receive one. Relaxing the requirements for registration cards provides the leaseholder the flexibility to hire day workers if they choose, possibly avoiding delays and saving them money by not having to wait for workers to obtain a card.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Shellfish Aquaculture Regulations, Regulatory Staff, Department of Natural Resources Fisheries Service, B-2, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8300, or email to [fisheriespubliccomment.dnr@maryland.gov](mailto:fisheriespubliccomment.dnr@maryland.gov), or fax to 410-260-8310. Comments will be accepted through October 3, 2016. A public hearing has not been scheduled.

### .03 Commercial Lease Procedures.

#### A. Aquaculture Activities on Submerged Land.

(1) [Except for demonstration leases, prior to engaging] *A person may not engage in aquaculture activities on submerged land in waters of the State, including the areas listed in Regulations .05 and .06 of this chapter, [a person shall:] unless the land is leased or permitted for shellfish aquaculture purposes.*

(2) *To obtain a submerged land lease a person shall:*

[(1)] (a) Apply for:

[(a)] (i) — [(b)] (ii) (text unchanged)

[(2)] (b) Submit a non-refundable fee of:

[(a)] (i) — [(b)] (ii) (text unchanged)

#### B. Aquaculture Activities in the Water Column.

(1) [Prior to engaging] *A person may not engage in aquaculture activities in the water column [of:] unless the water column is leased or permitted for shellfish aquaculture purposes.*

[(1)] (2) [Aquaculture enterprise zones listed in Regulation .05 of this chapter] *To obtain a water column lease, a person shall:*

(a) Apply for:

(i) [An aquaculture] *A water column lease by submitting an application on a form provided by the Department; and*

(ii) (text unchanged)

(b) Submit a non-refundable fee of [\$150; or.]:

(i) *\$300 for areas not in aquaculture enterprise zones as described in Regulation .05 of this chapter; or*

(ii) *\$150 for areas in aquaculture enterprise zones as described in Regulation .05 of this chapter.*

[(2)] Waters of the State not listed in Regulation .05 of this chapter, a person shall:

(a) Apply for:

(i) A shellfish aquaculture harvester permit as described in Regulation .04 of this chapter; and

(ii) A water column lease by submitting an application on a form provided by the Department; and

(b) Submit a nonrefundable fee of \$300.]

C. (text unchanged)

D. Rent.

(1) *Submerged Land Lease.* Except as provided in [§E(3)] §D(3) of this regulation, the rental rate for a submerged land lease is \$3.50 per acre per year and is due in full to the Department by December 31 of the preceding year.

(2) *Water Column Lease.* Except as provided in [§E(3)] §D(3) of this regulation, the rental rate for a water column lease in areas listed in Regulation .05 of this chapter is \$25 per acre per year and is due to the Department by December 31 of the preceding year.

(3) (text unchanged)

E.—H. (text unchanged)

I. Transfer of Lease.

(1) (text unchanged)

(2) Prior to receiving approval of a transfer, the person receiving a transferred lease shall complete a lease application and a shellfish aquaculture harvester permit application and submit the required forms with the transfer form described in [§J(1)] §I(1) of this regulation.

J. (text unchanged)

### .04 Shellfish Aquaculture Harvester Permit.

A. Except for a demonstration lease holder, a lease holder or a lease transfer applicant shall submit an application [for], *provided by the Department, and obtain a shellfish aquaculture harvester permit prior to engaging in aquaculture activities.*

B. A shellfish aquaculture harvester permit:

(1) (text unchanged)

(2) Shall be automatically renewed for a new term upon receipt of all reports required under Regulation .03D of this chapter; [and]

(3) Is not transferable[.]; and

(4) *Is an operator card for the purposes of Natural Resources Article, §4-11A-16.1, Annotated Code of Maryland.*

[C. Application. An application shall:

(1) Be submitted on a form provided by the Department; and

(2) Include a list of all individuals who may be engaging in aquaculture activities within the area described in the applicant's lease application.]

[D.] C. (text unchanged)

[E.] D. Permit Registrants.

(1) [An] *Except for an individual under the supervision of a shellfish aquaculture harvester permittee who is present on the leased area, an individual engaged in aquaculture activities within the area described in the permit applicant's lease shall be:*

(a) (text unchanged)

(b) [Issued] *In possession of a shellfish aquaculture harvester registration card issued to the individual by the Fisheries Service.*

(2) A shellfish aquaculture harvester permittee shall immediately notify the Department of any changes [to the list] of named permit registrants on a form provided by the Department.

(3) (text unchanged)

(4) *A shellfish aquaculture harvester permittee shall be responsible for all work and acts performed on the leased area under the permittee's supervision.*

[F.] E. [A shellfish aquaculture harvester permittee or permit registrant] *Any individual engaged in aquaculture activities on a leased area or transporting shellfish from a lease to a dealer:*

[(1)] Shall be in possession of the individual's shellfish aquaculture harvester registration card while engaged in aquaculture activities on a leased area;]

[(2)] (1) Shall harvest, *transport, and store shellfish* in accordance with the National Shellfish Sanitation Program Model Ordinance that is incorporated by reference in COMAR 10.15.07.01A;

[(3)] (2) Except as provided in [§F(4)] §E(3) of this regulation, may not harvest oysters from a:

(a) — (b) (text unchanged)

[(4)] (3) — [(7)] (6) (text unchanged)

[(8)] (7) Shall store oysters in accordance with [§H] §G of this regulation; and

[(9)] (8) Shall tag oysters in accordance with [§I] §H of this regulation.

[G.] *F. Tolerance Limit.*

(1) A shellfish aquaculture harvester permittee or permit registrant may not possess oysters harvested from a lease that include a combined total of more than 5 percent of shells and oysters which measure less than the minimum allowable size specified in [§F(3)] §E(2) of this regulation.

(2)—(4) (text unchanged)

[H.] *G. Containers.*

(1) (text unchanged)

(2) Oysters shall remain in the original container until a tag is no longer required on the container in accordance with [§I(4)(d)] §H(4)(d) of this regulation.

[I.] *H. Tagging.*

(1) Except as provided in [§I(2)] §H(2) of this regulation, an individual storing oysters in accordance with §H of this regulation shall complete and affix a Department-issued tag to each container of oysters prior to leaving the lease from which the oysters were harvested.

(2) An individual storing oysters in accordance with [§H] §G of this regulation may use a tag not supplied by the Department if:

(a)—(b) (text unchanged)

(3)—(8) (text unchanged)

[J.] *I. Denial, Suspension, and Revocation.*

(1) Denial. The Department may deny issuance of a shellfish aquaculture harvester permit or registration card if the applicant or listed registrant:

(a)—(c) (text unchanged)

(d) Held a shellfish aquaculture harvester permit or registration card that was revoked in accordance with [§J(2)] §I(2) of this regulation within 3 years of the date of the application.

(2) (text unchanged)

(3) Appeal.

(a) Except as provided in [§J(3)(c)] §I(3)(c) of this regulation, prior to denying issuance of, suspending or revoking a shellfish aquaculture harvester permit or a shellfish aquaculture harvester registration card, the Department shall give the individual notice of its intended action and an opportunity to appear at a hearing conducted in accordance with the contested case procedures set forth in State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04.

(b)—(c) (text unchanged)

MARK J. BELTON  
Secretary of Natural Resources

# Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

## Subtitle 38 BOARD OF INDIVIDUAL TAX PREPARERS

### 09.38.01 General Regulations

Authority: Business Occupations and Professions Article, §§21-101, 21-102, and 21-205, Annotated Code of Maryland

#### Notice of Proposed Action

[16-225-P]

The Board of Individual Tax Preparers proposes to amend Regulation .01 under **COMAR 09.38.01 General Regulations**. This action was considered by the Board at a public meeting held on June 13, 2016, notice of which was published on the Board's website, pursuant to General Provisions Article §3-302(c), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to give interpretive guidance to the public and the regulated industry by providing examples of activities the Board considers to constitute providing individual tax preparation services as that term is defined in Business Occupations and Professions Article, §21-101(f), Annotated Code of Maryland. Additionally, the Board has defined and provided specific examples of a category of services, administrative support services that do not constitute providing individual tax preparation services. Under Business Occupations and Professions Article, §§21-102(b) and 21-301, Annotated Code of Maryland, unless specifically exempted, only an individual registered with the Board may provide individual tax preparation services in Maryland.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Dennis L. Gring, Executive Director, Board of Individual Tax Preparers, 500 North Calvert Street, Third Floor, Baltimore, MD 21202, or call 410-230-6224, or email to dennis.gring@maryland.gov, or fax to 410 333-6314. Comments will be accepted through October 3, 2016. A public hearing has not been scheduled.

#### Open Meeting

Final action on the proposal will be considered by the Board of Individual Tax Preparers during a public meeting to be held on October 24, 2016, 1 p.m., at 500 N. Calvert Street, 3rd Floor Conference Room, Baltimore, MD 21202.